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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 36

IN THE MATTER OF FLORIDA EAST COAST RAILWAY COMPANY,
Debtor,

J. BRYSON AIRD and BANK OF THE MANHATTAN COMPANY,
Successor Mortgage Trustees,
Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE RESPONDENT, ATLANTIC COAST LINE RAILROAD COMPANY

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October 6, 1953

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The petitioners' brief treats all of the bondholders as bound by the wishes of the majority bondholder and the petitioners assert that the unrepresented minority bondholders have no right to ask for anything except that there be an internal reorganization and that they be allotted a minority stock interest (or other security interest) in the corporation owning the mortgaged property.

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE RESPONDENT, ATLANTIC COAST LINE RAILROAD COMPANY

This Court granted a writ of certiorari herein limited to Question I presented by the petition for the writ in No. 670, now No. 24 (345 U. S. 948). That question is quoted below.

The writ relates to an order of the Court of Appeals, Fifth Circuit, sitting *en banc,* entered on January 19, 1953, by which that Court (Chief Judge HUTCHESON, Judges HOLMES and RIVES, with Judges RUSSELL and BORAH dissenting) reversed an order dated March 11, 1952 of the District Court for the Southern District of Florida (Circuit Judge STRUM sitting as a District Judge) and directed the

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District Court to approve a plan of reorganization of the Debtor, which the Interstate Commerce Commission had approved and certified to the District Court pursuant to Section 77 of the Bankruptcy Act.

The plan, referred to herein as "the Commission's Plan" or simply as "the Plan", provides that the properties of the Debtor (with certain exceptions) shall be transferred to Atlantic Coast Line Railroad Company by a merger or consolidation of the two corporations or a transfer and conveyance by the Debtor's Trustees, and that the Atlantic Coast Line shall turn over cash and Atlantic Coast Line securities (two classes of bonds and two classes of stock) to be distributed among the creditors of the Debtor.

OPINIONS BELOW.

The opinion of the Court of Appeals (II, 717-733[1]) is reported: *In re Florida East Coast Ry. Co.*, 201 F. 2d 325. The opinion in the District Court (I, 127-168) is reported: *In re Florida East Coast Ry. Co.*, 103 F. Supp. 825.

The Commission approved the Plan initially in its Fifth Supplemental Report of July 12, 1951, *Florida East Coast Railway Company Reorganization*, 282 I. C. C. 81-191, and the Commission modified the Plan slightly, and approved it as modified, in its Sixth Supplemental Report of October 25, 1951, and its Order of the same date, *Florida East Coast Railway Company Reorganization*, 282 I. C. C. 195-226. Photo-lithographed copies of the Fifth and Sixth Supplemental Reports and the Order of October 25, 1951 will be found consecutively at the front of Volume I of the Record. The definitive Plan will be found in the Order (282 I. C. C. 213-226).

• • • • •

[1] In this and similar citations the Roman numerals refer to the volume of the printed record and the Arabic numbers to the page.

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An earlier plan, providing for a unification of the Debtor with the Atlantic Coast Line, which was approved in the Commission's Third and Fourth Supplemental Reports, *Florida East Coast Railway Company Reorganization*, 267 I. C. C. 295-391, 267 I. C. C. 729-759,[1] was the subject of an opinion in the District Court (Circuit Judge SIBLEY), *In re Florida East Coast Ry. Co.*, 81 F. Supp. 926, and an appeal, *Atlantic Coast Line R. Co.* v. *St. Joe Paper Co.*, 179 F. 2d 538. Atlantic Coast Line Railroad Company, respondent now, petitioned for certiorari, which was denied, *Atlantic Coast Line Railroad Co.* v. *St. Joe Paper Co.*, 339 U. S. 929.[2]

The Record.

The printed record consists of six Volumes. Nos. I-III comprise the printed record on appeal in the Court of Appeals, with the proceedings in the Court of Appeals at the back of Volume II. Nos. IV-VI comprise the printed record in the Court of Appeals on the prior appeal.

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[1] Photo-lithographed copies of these two Reports will be found in Volume IV of the Record, immediately following a photo-lithographed copy of the Second Supplemental Report.

[2] The Commission first approved a plan on April 6, 1942, *Florida East Coast Railway Company Reorganization*, 252 I. C. C. 423 (VI, 528-640). After consideration of petitions for modifications the plan was modified in certain respects and approved as modified in the Commission's Supplemental Report of August 10, 1942, *Florida East Coast Railway Company Reorganization*, 252 I. C. C. 731 (VI, 641-689). On October 19, 1943 District Judge STRUM sustained objections to the plan and remanded it to the Commission, *In re Florida East Coast Ry. Co.*, 52 F. Supp. 420 (VI, 690-697). After hearings the Commission approved a plan for an "internal reorganization" on January 8, 1945 in its Second Supplemental Report, *Florida East Coast Railway Company Reorganization*, 261 I. C. C. 151-193. (A photo-lithographed copy of the Second Supplemental Report will be found at the front of Volume IV of the record.) After the filing of various petitions for modifications, some of which contained requests for further hearing, the Commission reopened the case (267 I. C. C. 295-296).

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The unprinted record consists of everything which wa before the Court of Appeals in unprinted form. It con tains everything in the Atlantic Coast Line's Designatio of Contents of Record (I, 173-229) which is not in any o Volumes I-VI.

JURISDICTION.

The writ was granted under 28 U. S. C. § 1254.

THE QUESTION PRESENTED.

This Court limited its grant of certiorari to Question I in No. 670 (now No. 24). That question read in the petitio for certiorari as follows (p. 2-3):

> "It being clear that Section 77 of the Bankruptcy Act, as enacted in 1933, did not authorize the Interstate Commerce Commission to present a plan of reorganization of a railroad involving a 'forced' merger of the debtor Railway with another railroad, the question is whether amendments to the 1933 Act, made in 1935, do authorize forced mergers.
>
> "The Act of 1933 for railroad reorganizations in bankruptcy contained in subdivision (b) a so called consistency clause which qualified the powers of the Commission in respect of mergers, by expressly providing that a merger would have to be brought about by compliance with '*provisions*' of the Interstate Commerce Act which allowed mergers *only* if requested and agreed to by the carrier and then approved by the Commission, after notice to the Governors of the states, and after hearing communities and shippers served by the carriers. This 'consistency' provision in this legislation was repeated in subd. (e) of the 1933 Act, where it was said that transfers of property or consolidations or mergers may be made 'to the extent

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contemplated by the plan *consistent with the purposes* of the Interstate Commerce Act as amended'. It will be noted that the clause in (b) used the word 'provisions' and the clause in (e) used the word 'purposes'. By amendments in 1935 these two 'consistency' clauses were consolidated and transplanted from (b) and (e) to subdivision (f).

"In the 1935 Act, subd. (f), the clause allowing transfer and mergers had the qualification 'to the extent contemplated by the plan' and 'not inconsistent with the provisions and purposes of Chapter 1 of Title 49 as on August 27, 1935 or thereafter amended.'

"The narrow question is therefore whether the mere transfer of the 'consistency' clauses from subdivisions (b) and (e) of subdivision (f) altered the meaning of the clauses and gave to the Interstate Commerce Commission a power to force mergers, which was withheld from it under the Act of 1933."

However, these petitioners, the Mortgage Trustees, now say that the question presented is this (p. 3):

> "Does Section 77 authorize the Interstate Commerce Commission in a reorganization proceeding to transfer to another railroad against the mortgagee's consent substantially all of the debtor's assets pledged as security for the mortgage debt at a price fixed by the Commission that is less than the mortgage debt?"

In arguing this question, which they say is presented, the Mortgage Trustees treat the situation as if there were a single mortgagee which opposed the Plan (p. 6-7, 13). Their argument relates principally to *Louisville Joint Stock Land Bank* v. *Radford* (1935) 295 U. S. 555, and the right of the bondholders to have a foreclosure sale; if the argument were sound, it would apply to any plan of

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reorganization, whether or not the plan called for a merger or other form of unification with another railroad.

These petitioners have wandered far from the question which this Court agreed to review. Our principal argument on that question will be found in respondent's brief in No. 24. In this brief we will deal with the Mortgage Trustees' position in the case and what is said in their brief.

STATUTES INVOLVED.

The statutes involved are Section 77 of the Bankruptcy Act (11 U. S. C. § 205) and Section 5 of the Interstate Commerce Act (49 U. S. C. § 5).

The pertinent portions are set forth in full in Appendix A hereto.

STATEMENT OF THE CASE.

As the Mortgage Trustees' brief shows (p. 4, 8), they support the St. Joe Paper Company in No. 24 fully.

Presumably they are participating before this Court for two purposes: *first*, to try to create an impression of general opposition to the Commission's Plan and, *second*, to argue the points advanced at pages 10-22 of their brief. As we show later, they are not representative of any interest distinct from that of the St. Joe Paper Company.

The opposition to the Plan.

The following table sets forth the situation as to bondholdings which existed at the time of the hearing before Judge STRUM in the District Court and which, so far as the record shows, has not since been changed.[1]

[1] This table is made up from a tabulation which was submitted to the District Court by counsel for the duPont Trustees on February 11, 1952. Supporting detail will be found in Appendix B to the respondent's brief in opposition to the petition for certiorari in No. 670 (now No. 24). The totals agree with those given in Judge STRUM's opinion (I, 166; 103 F. Supp. 847).

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		Per Cent
(1) St. Joe Paper Company	$23,259,000	
duPont Trust	1,993,000	
	$25,252,000	56.12
(2) Other Bondholder-Opponents Appearing by Counsel		
Lynch Interests	$ 2,672,000	
Welbon (Claughton) Group	2,220,000	
Conn Group	978,000	
	$ 5,870,000	13.04
(3) 73 Motions to Dismiss	$ 2,855,448	6.35
(4) Deposit Committee (for Plan)	437,900	.97
(5) Others	$10,584,652	23.52
	$45,000,000	100.00

The bondholders in categories (1) and (2), holding 69.16%, opposed the Plan in the District Court and the Court of Appeals. The reasons which motivated them were referred to in Appendix B to the respondent's brief in opposition to the petition for certiorari in No. 670 (now No. 24), which also told the curious story of the 73 motions to dismiss. The Deposit Committee, which has since disbanded, favored the Plan. As the table shows, the holders of $10,584,652 of Bonds did not appear in the District Court or otherwise evidence any opposition to the Plan.

The number of bondholders who were on record in the District Court as favoring the Plan was actually much larger than the number on record in that Court as opposing it. The Deposit Committee spoke for 196 bondholders (II, 565), and even including the 73 bondholders who filed the motions to dismiss the number of those on record as opposing the Plan is much smaller.

The record does not show the number of bondholders

who hold the $10,584,652 of Bonds which were not represented at the hearing. However, the Bonds are listed on the New York Stock Exchange and widely traded in, and it will not be disputed that the $10,584,652 of Bonds are held by many hundreds of bondholders.

Judge STRUM treated all of the bondholders who were not represented by the Deposit Committee as opposed to the Plan, because the Mortgage Trustees of the First and Refunding Mortgage opposed the Plan (I, 166; 103 F. Supp. 847).

The Mortgage Trustees now say (p. 6-7, italics supplied):

> "Insofar as the individual holders of the First and Refunding 5% Bonds are concerned, the record shows that at the time of the hearing in the District Court on the latest plan the holders of slightly less than $35,000,000 face value of the bonds, being 75.5% of the issue, were, by written documents filed with the Court, opposed to the reorganization plan (103 F. Supp. 847). *As to the holders of the remaining $10,000,000, there is admittedly nothing to indicate how they then felt except for the few bonds then represented by a committee (since dissolved) which supported the plan.* Certainly there has been no affirmative support of the plan by any bondholders who are part of this minority other than those who had bonds on deposit with the committee, and in the absence of such affirmative support the District Court, and even the Court of Appeals in its latest opinion, accepted the fact that substantially all the bondholders are opposed to the latest plan calling for a forced merger with the Coast Line (103 F. Supp. 831-833; 201 F. 2d 326)."

Surely the Mortgage Trustees have created a vicious circle. Judge STRUM counted the holders of the $10,584,652 of unrepresented Bonds as opposed to the Plan because the Mortgage Trustees opposed it. Now the Mortgage Trustees

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admit there is nothing to indicate that the holders of the $10,584,652 oppose the Plan, but they now count them as opposed because Judge STRUM counted them as opposed.

They cite 201 F. 2d 326 as support for the statement that "even the Court of Appeals in its latest opinion, accepted the fact that substantially all of the bondholders are opposed to the latest plan calling for a forced merger with Atlantic Coast Line". We find nothing to that effect at 201 F. 2d 326; everything there relates to the Court's opinions on the prior appeal. And the Mortgage Trustees themselves admit that there is nothing to indicate that the holders of the $10,584,652 oppose the Plan.

The Mortgage Trustees were appointed by the St. Joe Paper Company.

When the prior Mortgage Trustees resigned in 1948 the present Successor Mortgage Trustees were appointed by the St. Joe Paper Company. Under the provisions of the Mortgage the St. Joe Paper Company had the power to make the appointment because it held a majority in amount of the Bonds.*

The Mortgage Trustees state that their duties as such call for them to follow the lead of the St. Joe Paper Company and not to seek a merger plan no matter how favorable such a plan might be to the other bondholders.

J. Bryson Aird, who is Vice President in charge of the Trust Department of the Bank of the Manhattan Company and is individually a Mortgage Trustee, set forth the Mortgage Trustees' conception of their duties when he was a witness at the hearing before Judge SIBLEY in 1949 (V, 379):

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* The appointment of the Mortgage Trustees by the St. Joe Paper Company is recited in Document 728 (Printed Court Record, Vol. 6, p. 47-48), which is part of the unprinted record (I, 207).

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> "Furthermore, the Trustees' positions, naturally, would be—the Trustee is ordinarily persuaded, and should be, by a large majority of its bondholders."
>
> • • • • •

As we show elsewhere in discussing the opposition of the Lynch Interests, the Welbon (Claughton) Group and the Conn Group to the Plan, all those small groups had special reasons, not common to the bondholders as a class, for opposing the Plan. Presumably the question which primarily interests the holders of the $10,584,652 of unrepresented Bonds and the $437,900 which were represented in the District Court by the Deposit Committee is this:

> Is it in their interest to have the Commission's Plan approved, confirmed and consummated or could they reasonably expect to fare better by trying to have an internal reorganization?

The Mortgage Trustees have flatly taken the position, *first,* that it is none of their business whether the holders of the unrepresented Bonds would do better under the Commission's Plan than under an internal reorganization and, *second,* that it is no business of the Commission or the Court either.

To test, and to have a record showing, how the bondholders would fare under various possible plans the Atlantic Coast Line asked the Commission to make findings as to the "fair market values" of the securities which would be issued under (1) the Plan which it approved, (2) the St. Joe Paper Company's 1950 plan and (3) the plan for an internal reorganization having the kind of capital structure which the Commission would be willing to approve if there were an internal plan (such plan has been referred to as the "Commission's hypothetical internal plan"). The Commission made findings as follows (282 I. C. C. 157-158, 162-163) as to the market value of the cash and securities which would be distributable to the creditors of the Florida

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East Coast under the three plans (exclusive of any cash distributable from the estate):

The Commission's Plan	$38,380,000
St. Joe Paper Company Plan	26,250,000
Commission's Hypothetical Internal Plan	24,050,000

Of course, the principal reason why the Commission's Plan provided for so much more than either internal plan is because very large economies would result from the unification (282 I. C. C. 135-140). And the assurance of such economies from a unification is the reason why an internal plan cannot compete with a unification plan if there is equality of treatment under the internal plan.

After the Commission's Plan was certified to the Court, the St. Joe Paper Company, the duPont Trustees, the Lynch Interests, the Welbon (Claughton) Group, the Conn Group and the Mortgage Trustees agreed on a new plan and proposed that it be carried out in equity (I, 28-39). This is the plan referred to at page 32 of the petitioners' brief in No. 24. We have referred to it as the "alternative equity plan" because it is the plan which the parties we have named would like to consummate through an equity foreclosure. One of the outstanding features of the alternative equity plan is that it provides for unequal treatment of the holders of the First and Refunding Mortgage Bonds. Because the alternative equity plan was not developed until after the Commission had certified its Plan to the Court, there were, of course, no findings of the Commission with respect to the alternative equity plan. But an expert for the Deposit Committee made a thorough and careful comparison of the Commission's Plan and the alternative equity plan and concluded that the Commission's Plan provided more than the alternative equity plan provided even for those who would be the beneficiaries of the unequal treatment under the alternative equity plan (II, 564-616; Deposit Committee's Ex. Nos. 1-8, Vol. III).

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Judge STRUM's opinion made no reference whatever to the Commission's findings as to prospective market values and fair market values or to the evidence of the Deposit Committee's expert. On the other hand, after saying that the Plan was "intrinsically unfair and inequitable", he said (italics supplied; I, 142; 103 F. Supp. 835):

> "This is so even though the new securities in the other railroad may have an *ostensible value* equal to that of the present securities of the debtor railroad."

Furthermore, he referred four times to the Atlantic Coast Line securities as "of fluctuating or debatable value" or "of debatable value" as if they were unacceptable on that account (I, 142, 142, 143, 151; 103 F. Supp. 835, 835, 835, 839).

On the appeal to the Court of Appeals from Judge STRUM's decision the Atlantic Coast Line stressed the Commission's findings and the evidence as to the prospective fair market values of the allotments of securities under the alternative plans. In a joint brief filed by the Mortgage Trustees and certain of the bondholder-appellees, including the St. Joe Paper Company, in which the name of the counsel for the Mortgage Trustees appeared first, it was said (p. 121-122, italics supplied):

> "Coast Line urges (A. C. L. Brief, p. 99) that the merits of the several plans be compared on this rejected basis, using as a straw man values of securities which might be issued under a mythical hypothetical internal plan of reorganization, using values as to the latter of securities which do not now exist and will not exist in the future, which values were in turn predicated upon unknown conditions at some future, unknown time. The extensive discussion on this subject (A. C. L. Brief, p. 98-109) has no relevancy to the issues before the Court. The issue

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> in this proceeding is not whether appellant's securities, presently unissued, in a future and unknown market, will bring greater prices than a hypothetical reorganized debtor's securities, of an unknown aggregate amount, on the same illusory market. The only persons who have an interest in the mortgaged property are the bondholders. *They are entitled to that property, no more, and no less.*"

When the Mortgage Trustees said that the bondholders were "entitled to that property, no more, no less", what they meant, of course, is that the bondholders are entitled only to have the property owned by a new corporation (or a reorganized debtor) in which the holders of the unrepresented $10,584,652 of Bonds would have a minority stock interest. The broad proposition on which the Mortgage Trustees stood in the Court of Appeals, and on which they and the other petitioners now stand, is that in a railroad reorganization a minority of a class of mortgage bonds has no right to ask for anything except that there be an internal reorganization and that they be allotted a minority stock interest (or other security interest) in the corporation owning the mortgaged property. Reserving for the Argument any discussion of the soundness of such a proposition, it may be noted here that no one who advances such a proposition can be regarded as a true representative of minority interests.

The record and the findings of the Court of Appeals create the strongest presumption, which is not rebutted, that the holders of the unrepresented Bonds would favor the Commission's Plan if properly informed.

The record establishes, and the Court of Appeals has found, that the Plan is "most favorable" to the holders of the First and Refunding Mortgage Bonds as a class and that the opposition to the Plan is due to the desire of the

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opponents of the Plan for control. Chief Judge HUTCHESON's opinion says (II, 728; 201 F. 2d 329-330):

> "[The record] shows a most careful and painstaking effort on the part of the commission to properly, adequately, and independently value both the securities held by the bondholders and those to be received by them in exchange and that its finding that the plan was fair and equitable finds full support in the evidence.
>
> "Indeed, an examination of all the testimony now available touching on and dealing with the valuations which under the statute it was for the commission to make, demonstrates, we think, beyond any peradventure that the commission's findings and estimates of the respective future earnings of East Coast and Coast Line and of the present and future values of the securities to be given in exchange for each other was most favorable to the bondholders of East Coast.
>
> "The same careful examination shows that but for the fact, which apparently dominates and controls most of the bondholders in this controversy, that they are primarily concerned not with obtaining value received for their securities but with a conversion of their bonds into a title to the East Coast properties, so that they will own and manage the railroad, all of them would be bound to agree that what they will receive for their bonds under the plan will be of a value equal to, or more than, that of their bonds."

The minority of the Court of Appeals did not indicate any disagreement with the majority as to these findings.

The disapproval of the Commission's Plan would result in a long delay, whether there were a new plan in the Section 77 proceeding or the Section 77 proceeding were dismissed at the instance of the petitioners and other parties.

The Mortgage Trustees and others developed the program for the dismissal of the Section 77 proceeding and

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the adoption of the alternative equity plan (I, 25-39), which is discussed in the respondent's brief (p. 40-43, 145-148) in No. 24. As there shown, the program for the alternative equity plan sponsored by the Mortgage Trustees would be plainly against the interest of the unrepresented bondholders.

The Mortgage Trustees treat the failure of the holders of the unrepresented Bonds to appear in Court to support the Commission's Plan as indicating that they would not favor the Plan when given an opportunity to vote on it and properly informed about it. It is not necessary to argue in this Court that no weight should be attached to the fact that the holders of the unrepresented Bonds did not appear in Court.

The summary of the case in the petitioners' Conclusion is grossly misleading.

The petitioners' conclusion commences with the following paragraph (p. 22):

> "Stripping this case to the essentials, the issue boils down to the following: In 1945, just as a satisfactory internal reorganization of the Florida East Coast Railway was about to be consummated, a majority of the Interstate Commerce Commission, in order to protect its concept of the public interest, decided that the railway should be merged with the Atlantic Coast Line Railroad at a price acceptable to the Coast Line, but unacceptable to the Mortgagee Trustees and the bondholders. In subsequent years the Commission has stuck stubbornly to that decision, justifying its action by asserting that the merger terms it had arranged are of substantial value to the First and Refunding bondholders who concededly own the equity."

"A satisfactory internal reorganization of the Florida East Coast Railway" was *not* about to be consummated in 1945. The Commission did approve an internal plan on January 8, 1945 but that plan was vigorously opposed by

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the Lynch Interests (the petitioners in No. 33), and several of the parties (including the St. Joe Paper Company) filed petitions for modifications (267 I. C. C. 295-296). Speaking of the plan the Lynch Interests said:*

> "This is the harshest plan of reorganization that has been called to our attention."

The Commission made no decision in favor of a merger plan in 1945. It first approved a so-called merger plan in April, 1947 (267 I. C. C. 295-391).

There is no basis for the statement that the plan approved in April, 1947 was "unacceptable to the Mortgage Trustees". The present Mortgage Trustees were not appointed until 1948.

The Commission did not "stick stubbornly" to the plan which it approved in 1947 and it did not adhere to the same "merger terms". The present Plan differs materially from the 1947 plan.**

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* This will be found at page 3 of the petition filed by the Lynch Interests, dated March 9, 1945, for a modification of the plan of January 8, 1945 and for further hearing. This petition is included in the unprinted portions of the record (I, 181).

** The petition in No. 670 compared certain provisions of the 1947-1948 plan and the present Plan (p. 12-14). In Appendix C of respondent's brief in opposition to the petition for certiorari in No. 670 respondent pointed out other differences between the two plans (p. 3-4).

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SUMMARY OF THE ARGUMENT.

1. The Mortgage Trustees have no right or power to block any plan of reorganization. They do not even have any right to vote on a plan when one is submitted for acceptance or rejection.

2. The principal significance of the petitioners' brief is that it brings out that the Mortgage Trustees and the other petitioners all stand on the proposition that the holder of a majority in amount of the class of bonds such as the First and Refunding Mortgage Bonds in this case has the right to block any plan of reorganization other than one for an internal reorganization under which the majority bondholder would receive a majority stock interest in a new or reorganized company.

The petitioners' brief treats all of the bondholders as bound by the wishes of the majority bondholder and the petitioners assert that the unrepresented minority bondholders have no rights to ask for anything except that there be an internal reorganization and that they be allotted a minority stock interest (or other security interest) in the corporation owning the mortgaged property.

The petitioners' contentions conflict directly with the applicable decisions of this Court.

3. The substantive security rights given by the laws of Florida under the mortgage held by the petitioners which are referred to in the petitioners' Point I are not materially different from those of other states and are not immune to the powers of the Federal Government under the Bankruptcy Clause and the Interstate Commerce Clause.

4. The petitioners' Point II, based on *Louisville Joint Stock Land Bank* v. *Radford* (1935) 295 U. S. 555 is frivolous. The petitioners do not even mention *Reconstruction Finance Corporation* v. *Denver and Rio Grande Western Railroad Co.* (1946) 328 U. S. 495, which completely disposes of all of their contentions in Point II.

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ARGUMENT.

I.

The Mortgage Trustees have no right or power to block any plan of reorganization. They do not even have any right to vote on a plan when one is submitted for acceptance or rejection.

In some instances the Mortgage Trustees refer to themselves as if the Bank of the Manhattan Company and Mr. Aird had a real title to, and control over, the mortgage and had all the rights and powers under Section 77 which they would have if they beneficially owned the mortgage (p. 6-7, 13).

If the petitioners' brief conveys that impression, it is probably inadvertent, since it is not disputed that the Mortgage Trustees have no such powers or standing under Section 77. Indeed, when a plan is submitted for acceptance or rejection mortgage trustees are not even allowed to vote on it (11 U. S. C. Section 205 (e)).

II.

The principal significance of the petitioners' brief is that it brings out that the Mortgage Trustees and the other petitioners all stand on the proposition that the holder of a majority in amount of a class of bonds such as the First and Refunding Mortgage Bonds in this case has the right to block any plan of reorganization other than one for an internal reorganization under which the majority bondholder would receive a majority stock interest in a new or reorganized company.

The petitioners' brief treats all of the bondholders as bound by the wishes of the majority bondholder and the petitioners assert that the unrepresented minority bondholders have no right to ask for anything except that there be an internal reorganization and that they be allotted a minority stock interest (or other security interest) in the corporation owning the mortgaged property.

The petitioners' contentions conflict directly with the definitive decisions of this Court.

In the Statement above at pages 12-13 we have shown that the Mortgage Trustees contend that the St. Joe

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Paper Company, as the holder of a majority in amount of the First and Refunding Mortgage Bonds, has the right to block any "merger plan" and that it has a right to insist upon an internal plan in which it will have a majority stock interest in a new or reorganized company.

We have also shown that the petitioners have explicitly adopted the position that the holders of the unrepresented Bonds, amounting to more than $11,000,000, have no rights to ask for anything except that there be an internal reorganization and that they be allotted a minority stock interest (or other minority interest) in the corporation owning the mortgaged property.

And we have shown that the interests of the unrepresented bondholders have been completely disregarded by the Mortgage Trustees — and we may say that the same thing is true of the other petitioners. The Mortgage Trustees treat the situation as if there were a single mortgagee which opposed the Plan. The other petitioners treat the situation as if all the mortgage bondholders opposed the Plan. None of the petitioners consider, as the Commission and the Court of Appeals considered, whether the holders of the unrepresented Bonds would fare better under the present Plan than under any alternative which has been proposed.

The record and the findings of the Court of Appeals create the strongest presumption, which is not rebutted, that the holders of the unrepresented Bonds would favor the Commission's Plan if properly informed.

The position which has been adopted by the Mortgage Trustees and the other petitioners is inconsistent with the mandate of Section 77 as that Section has been construed by this Court. Furthermore, it is inconsistent with the basic philosophy of reorganizations which this Court has propounded over the last two decades.

The objectives of Section 77 with respect to the treatment of creditors and stockholders can be ascertained from

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the mandate that before approving a plan the Commission and the Court find that the plan*

> "* * * is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders;"

This mandate can be summarized as follows:

Under a plan there must be an adequate total consideration for all rights surrendered by the creditors and stockholders who are affected by the plan.

There must be a proper distribution of the total consideration among the several classes.

The statute speaks of "each class of creditors or stockholders". The plain intent is to provide fair treatment for each class *as a class.*

What is fair in any case is necessarily a matter of judgment. *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (1943) 318 U. S. 523, 565-566.

Whether a plan is fair and equitable is to be *determined* by the Commission subject to a limited judicial review. *Ecker* v. *Western Pacific Railroad Corp.* (1943) 318 U. S. 448, 477; *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (1943) 318 U. S. 523; *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Co.* (1946) 328 U. S. 495, 534.

The circumstance that a particular creditor, however large, or a group of creditors, however important, supports a plan does not establish that it is fair and equitable. With

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* A finding to this effect by the Court is required by subsection (e). Under subsection (d) the Commission must first find that the plan meets the requirement of subsection (e).

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respect to the former § 77B Justice DOUGLAS said for this Court in *Case* v. *Los Angeles Lumber Products Co.* (1939) 308 U. S. 106, 114-115:

> "The court is not merely a ministerial register of the vote of the several classes of security holders. All those interested in the estate are entitled to the court's protection. Accordingly the fact that the vast majority of the security holders have approved the plan is not the test of whether the plan is a fair and equitable one. • • • The contrary conclusion in such cases would make the judicial determination on the issue of fairness a mere formality and would effectively destroy the function and the duty imposed by the Congress on the district courts under § 77B. That function and duty are no less here than they are in equity receivership reorganizations, where this Court said, 'Every important determination by the court in receivership proceedings calls for an informed, independent judgment.' *National Surety Co.* v. *Coriell*, 289 U. S. 426, 436."

Similarly the circumstance that the holder or holders of a majority in amount of a class of bonds is opposed to a plan does not establish, or even tend to establish, that the plan is unfair or inequitable. *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Co.* (1946) 328 U. S. 495, 531-535.

Case v. *Los Angeles Lumber Products Co.* was preceded by *National Surety Co.* v. *Coriell* (1933) 289 U. S. 426, 436 and *First National Bank* v. *Flershem* (1934) 290 U. S. 504, 525-526 and followed, not only by *Western Pacific*, *Milwaukee* and *Denver & Rio Grande* cases, involving Section 77 proceedings, but also by *Securities & Exchange Commission* v. *Central-Illinois Securities Corp.* (1949) 338 U. S. 96, in which this Court referred at length (p. 114, 119-123, 125-126) to Section 77 and the functions of the Commission and the Courts thereunder. The result has been to establish an integated body of law.

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No longer may a plan of reorganization of any kind over which the Federal Courts have jurisdiction be found to be fair merely because a majority in amount of a class of creditors favor it or even because a large majority in amount of all classes support it. There must be a *determination* of fairness—by the Court in equity or under Chapter X, by the Interstate Commerce Commission under Section 77 or by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935—with the determinations of the two Commissions subject to a limited judicial review.

While there has never been any occasion for this Court to undertake to frame a comprehensive definition of the words "fair and equitable", there would seem to be no reason to doubt that, if one plan will provide more for a class of creditors than another plan, the more favorable of the two plans should be approved unless there be some other factor—such as incompatibility with the public interest or unfairness to another class or classes of creditors—which stands in the way. The basic rule is, of course, the one which covers the administration of trust estates. The *Restatement, Trusts,* Sec. 190, comment l, refers to "the duty of the trustee in selling trust property to sell it at the best price obtainable" and Judge LEARNED HAND has said that "It is the duty of every fiduciary to get the best price he can upon the sale of any part of the trust property". *Berner* v. *Equitable Office Bldg. Corporation* (C. C. A. 2, 1949) 175 F. 2d 218, 221. Whether or not the rules which govern plans of reorganization can always be stated so broadly, certainly there must be a controlling consideration to justify carrying out the less favorable of two possible plans. The dearth of authority on the subject is doubtless attributable to the fact that it would take unusual temerity to assert that a fiduciary, commission or court having the responsibility for the disposition of trust property could

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choose the less favorable of two alternative dispositions unless there were a particular justification for doing so.

In effect the petitioners urge that the St. Joe Paper Company has a right to insist that the assets in the debtor's estate, which are trust assets, be disposed of in a manner which will enable St. Joe Paper Company to control the assets even though another disposition would be more advantageous economically to the holders of the First and Refunding Mortgage Bonds as a class and would also be in the public interest. Their demand is not significantly different from a demand by the holder of a majority interest in a trust that the assets of a trust be sold to the majority holder at a price less favorable than could be obtained by a sale to someone else. There would seem to be no real difference between a demand of one of several beneficiaries of a trust that the trust assets be sold to him at a price lower than that for which they could be sold to someone else and a demand by the holder of a majority in amount of a class of mortgage bonds that the property subject to the mortgage be transferred, for less than it could be disposed of elsewhere, to a corporation in which the majority bondholder would be the majority stockholder.

The petitioners' theories about the rights of the holder of a majority in amount of the class of mortgage bonds seem strangely out of date in the light of this Court's decisions in such cases as *Southern Pacific Company* v. *Bogert* (1919) 250 U. S. 483, *Pepper* v. *Litton* (1939) 308 U. S. 295 and *Young* v. *Higbee Company* (1945) 324 U. S. 204.

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III.

The substantive security rights given by the laws of Florida under the mortgage held by the petitioners which are referred to in the petitioners' Point I are not materially different from those of other states and are not immune to the powers of the Federal Government under the Bankruptcy Clause and the Interstate Commerce Clause.

The petitioners summarize the mortgage law of the State of Florida (p. 10-12). Their principal protest is that the law of Florida provides for foreclosure sales and that the Commission's Plan does not provide for such a sale. There appears to be nothing unusual about the laws of Florida and there is no reason to suppose that a law of Florida providing for a foreclosure sale is any more immune from action by the Congress under the Bankruptcy Clause or Interstate Commerce Clause of the Constitution than similar laws of any other states.

IV.

The petitioners' Point II, based on *Louisville Joint Stock Land Bank* v. *Radford* (1935) 295 U. S. 555 is frivolous. The petitioners do not even mention *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Co.* (1946) 328 U. S. 495, which completely disposes of all of their contentions in Point II.

The gist of the argument under Point II is that *Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 555 which was decided in May, 1935, held that the substantive rights of mortgagees are protected by the Fifth Amendment and that the first Frazier-Lemke Act was unconstitutional, and that it is not reasonable to suppose that in August, 1935, the Congress intended to make a "legislative attack upon substantive mortgage rights" when it enacted the "cram-down provision" of Section 77.

Quoting from *Wright* v. *Vinton Branch* (1937) 300 U. S. 440, 457 the brief discusses "five enumerated rights" and

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particularly four which, it is said, "obviously go to the essence of the substantive rights of every mortgagee" (p. 16-17). Three of the four relate to a "judicial public sale."

The Mortgage Trustees' argument leads inevitably to the proposition that, when the Congress enacted the "cram-down provision" in 1935, it did not intend to impinge upon the substantive right of the holders of railroad mortgage bonds to have a "judicial public sale". This proposition has no necessary connection, hardly any connection at all, with the subject of mergers. If it were sound, it would apply to all reorganizations under Section 77, whether they involved mergers or not, and any mortgagee, or any holders of mortgage bonds, could insist on a foreclosure sale.

The cram-down provision reads (11 U.S.C.A. § 205(e), italics supplied):

> "Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subsection holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided, That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interest or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), in-*

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clusive, of the first paragraph of this subsection (*e*): • • •."

Reconstruction Finance Corporation v. *Denver & Rio Grande Western Railroad Co.* (1946) 328 U. S. 495 decided explicitly that the "cram-down provision" of Section 77 dispensed with any need for foreclosure sales. In that case the Trustees of the General Mortgage Bonds of the Denver & Rio Grande Western Railroad Company, who happened to be represented by the firm of which the principal counsel for the petitioners in No. 24 are members, insisted in their brief that (p. 65):

> "One fundamental limitation upon the bankruptcy power would seem obviously to be that no secured creditor may be compelled to surrender his security and to take something else in lieu of it unless the arrangement has at least then been approved by a *majority* of the voting creditors of his class. Without that minimum safeguard, reorganization procedure would become reorganization by mere judicial (and Commission) fiat."

In support of this contention they cited and quoted from the *Radford* case (p. 65-66).

This Court said at 328 U. S. 509:

> "We see no more constitutional impediment to the elimination of claims against railroad debtors by the Interstate Commerce Commission's determination of values, with judicial review as to the sufficiency of the evidence and compliance with statutory standards, than we do to their elimination by an accepted bid in a depression market.[11]

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[11] 318 U. S. at 475-76; 318 U. S. at 536-39.

Compare *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 279; *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180, 186; *Gelfert* v. *National City Bank*, 313 U. S. 221."

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and at page 533:

> "We think that the provisions for confirmation by the courts over the creditors' objection are within the bankruptcy powers of Congress. Those powers are adequate to eliminate claims by administrative valuations with judicial review and they are adequate to require creditors to acquiesce in a fair adjustment of their claims, so long as the creditor gets all the value of his lien and his share of any free assets.[36]
>
> [36] *Wright* v. *Union Central Ins. Co.*, 311 U. S. at 278, and discussion at p. 509, *supra*."

The Mortgage Trustees have simply resurrected an argument on which the St. Joe Paper Company relied heavily before the *Denver & Rio Grande* opinion and have ignored the handing down of that opinion on June 10, 1946.*

* The argument made by the St. Joe Paper Company was summarized in the Commission's Third Supplemental Report, dated April 8, 1947, as follows (267 I. C. C. 303, footnote omitted):

> "The St. Joe Paper Company contends that, in the absence of full payment of the first and refunding bondholders' claim or of a public sale of the debtor's properties at an upset price fixed by us, these bondholders are entitled upon reorganization to possession of all the properties of the debtor including its cash on hand. It further asserts that any interpretation of the powers conferred upon us and the court by section 77 which would permit of a denial of this right to the bondholders over their objection (and in the absence of an exercise of the right of eminent domain) would violate the fifth amendment of the Constitution. The St. Joe Company bases its argument fundamentally on the decision of the United States Supreme Court in *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555."

The *Denver & Rio Grande* case was decided on June 10, 1946. While the Third Supplemental Report was issued later and refers to the *Denver & Rio Grande* decision (267 I. C. C. 304), the paragraph from the Report which we have quoted summarizes the contention pressed by the St. Joe Paper Company in its brief filed in February, 1946, after the November, 1945, hearings and before the *Denver & Rio Grande* opinion was issued.

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CONCLUSION.

The order of the Court of Appeals should be affirmed.

Dated, October 6, 1953

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THE STATUTES

Attributes of a Plan of Reorganization.

SECTION 77(b)—first paragraph in full.[1]

(b) A plan of reorganization within the meaning of this ection (1) shall include provisions modifying or altering he rights of creditors generally, or of any class of them, ecured or unsecured, either through the issuance of new ecurities of any character or otherwise; (2) may include rovisions modifying or altering the rights of stockholders enerally, or of any class of them, either through the issu- nce of new securities of any character, or otherwise; (3) nay include, for the purpose of preserving such interests f creditors and stockholders as are not otherwise provided or, provisions for the issuance to any such creditor or tockholder of options or warrants to receive, or to sub- cribe for, securities of the reorganized company in such mounts and upon such terms and conditions as may be set orth in the plan; (4) shall provide for fixed charges (in- luding fixed interest on funded debt, interest on unfunded ebt, amortization of discount on funded debt, and rent for eased railroads) in such an amount that, after due con- ideration of the probable prospective earnings of the prop- rty in light of its earnings experience and all other rele- ant facts, there shall be adequate coverage of such fixed harges by the probable earnings available for the payment hereof; (5) shall provide adequate means for the execution f the plan, which may include *the transfer of any interest n or control of all or any part of the property of the debtor o another corporation or corporations, the merger or con- olidation of the debtor with another corporation or cor- orations,* the retention of all or any part of the property y the debtor, the sale of all or any part of the property f the debtor either subject to or free from any lien at not

[1] The text of all Section 77 provisions is taken from 11 U. S. . A. § 205. Italics are supplied.

less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; *and may include any other appropriate provisions not inconsistent with this section.*

Approval of a Plan by the Commission.

SECTION 77(d)—first paragraph in part.

• • • the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

Approval of a Plan by the Court.

SECTION 77(e)—first paragraph and first sentence of second paragraph.

(e) Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties

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n interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c), paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same.

If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor,

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and he shall enter an order in which he may either dismiss the proceedings or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received.

Confirmation of a Plan—the "Cram-down" Provision.

SECTION 77(e)—third paragraph in part.

Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subsection holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided, That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interest or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this subsection (e):* • • •.

The So-Called "Consistency Clause".

SECTION 77(f)—fifth sentence

Upon confirmation of a plan, the Commission shall, without further proceedings, grant authority for the issue of

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any securities, assumption of obligations, transfer of any property, sale, consolidation or merger of the debtor's property, or pooling of traffic, to the extent contemplated by the plan and *not inconsistent with the provisions and purposes of chapter 1 of Title 49 as on August 27, 1935, or thereafter amended.*

Section 5 of the Interstate Commerce Act—Pertinent Provisions.[1]

UNIFICATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

(2) (a) *It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—*

(i) *for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier,* or two or more carriers jointly, *to purchase,* lease, or contract to operate *the properties,* or any part thereof, *of another;* or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) *Whenever a transaction is proposed under subparagraph (a), the carrier* or carriers or person *seeking*

[1] The text is taken from 49 U. S. C. A. § 5. Italics are supplied.

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authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305 (e)), *and shall afford reasonable opportunity for interested parties to be heard.* If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modications, so found to be just and reasonable: *Provided,* That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1)

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the effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commisson that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order

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such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

• • • • •

CONTROL EFFECTED BY OTHER THAN PRESCRIBED METHODS

(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5), the words "control or management" shall be construed to include the power to exercise control or management.

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PLENARY NATURE OF AUTHORITY UNDER SECTION

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modication of its powers under its corporate charter or under the laws of any State.

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